

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
ALASCOM, INC.)	Transmittal No. 1281
Tariff FCC No. 11)	
)	
In the Matter of)	
)	
Investigation of Alascom, Inc.)	CC Docket No. 95-182
Interstate Transport and)	
Switching Services)	

**STATEMENT OF CURRENT POSITION OF ACS-LD AND PETITION
TO SUSPEND AND INVESTIGATE TRANSMITTAL NO. 1281**

ACS Long Distance (“ACS-LD”), by its undersigned attorneys, hereby presents its (1) statement of current position on Alascom’s Tariff 11 issues, requested by the Commission in its Public Notice issued in CC Docket No. 95-182,¹ and (2) petition to suspend and investigate Alascom’s most recent annual Tariff 11 filing, Transmittal No. 1281, pursuant to 47 C.F.R. § 1.773.

ACS-LD is a small Alaska competitive interexchange carrier with less than 5% of total Alaska interexchange revenue. Events that have occurred over the last year have reinforced ACS-LD’s position stated in ACS-LD’s Comments filed in WC Docket No. 03-18 on February 5, 2003, that the Commission should investigate the extent of competition in the different areas covered by Tariff 11 to determine whether competition is sufficient in specific areas to justify lessening or lifting regulatory rules.² Consequently, the Commission should suspend Alascom’s current Tariff 11 filing and focus its Transmittal No. 1281 rate investigation only on areas that it

¹ *Public Notice, Further Comment Requested in Investigation of Alascom, Inc. Tariff FCC No. 11*, 18 FCC Rcd. 22542 (2003) (“Public Notice”).

² *ACS-LD’s Comments*, WC Docket No. 03-18, filed Feb. 5, 2003.

determines still require full regulation. However, the Commission should fully investigate all prior Tariff 11 revisions that have been filed under existing rules and, as appropriate, order Alascom to refund any revenues earned in excess of reasonable rates to carriers that subscribed to the tariff.

Statement of Current Position

In its Public Notice, the Commission asked parties to state their positions with respect to Alascom's Tariff No. 11, indicating whether certain changes have affected the positions that they have filed on previous annual Tariff 11 revisions.³ The Commission noted that events have occurred since it initiated its investigation, including changes in ownership of certain petitioners, and changes in regulation, including the elimination of its policy preventing construction of duplicate earth stations in remote Alaska locations. The Commission asked that parties state whether any of these developments have caused them to change their positions. Additionally, it asked that parties challenging the tariff describe the information that is needed to complete the investigation and determine whether the tariffs are unlawful.

The changes that the Commission describes confirm ACS-LD's position that the FCC should conduct an investigation into the extent of competition in the different areas covered by Tariff 11 before it investigates Alascom's most recent Tariff 11 rate proposal. The FCC's elimination of its policy barring construction of duplicative earth station facilities in certain rural Alaska locations enables competitive carriers to construct earth stations in all locations covered by Tariff 11. Where two or more carriers operate telecommunications facilities in a location that are available for other carriers to use, market forces may be sufficient to constrain rates. In those locations, Tariff 11 may no longer be needed. If the Commission finds that it can take certain

³ *Public Notice.*

areas “off the table” under this standard, it can limit its Transmittal No. 1281 investigation to rates for the other areas.

The Commission still needs to conduct a full investigation into rates for areas where the market does not justify construction of duplicative facilities. The Commission would need the same type of cost support for its investigation that it has required in the past. Thus, the change in rural facilities’ policy impacts the *scope* of the rate investigation, not necessarily the method of the investigation.

The Commission should fully investigate all Alascom annual tariff revisions consolidated in Docket 95-1802 that have gone into effect subject to an accounting order. As the Commission has found in each successive suspension order, the tariffs raise issues regarding rate levels, rate structures, and terms and conditions of service that require investigation. The Commission must conduct the investigations that it has ordered so that carriers charged excessive rates may receive refunds for service over those periods. The rules that were in place when these investigations were set should govern the conduct of the investigation.

Petition to Suspend and Investigate Transmittal No. 1281

Pursuant to 47 C.F.R. § 1.773, ACS-LD hereby respectfully requests that the Commission suspend Alascom Transmittal No. 1281, as it has suspended every prior annual Tariff 11 transmittal. ACS-LD also requests that the Commission order an investigation of Transmittal No. 1281 to be consolidated with the ongoing investigation of prior Tariff 11 filings in CC Docket No. 95-182.

Alascom's Tariff 11 revisions have been problematic every year. ACS-LD has filed comments repeatedly urging the Commission to suspend and investigate annual filings for Alascom's failure to properly supply specific information. The Commission has concurred with

ACS-LD's analysis of Tariff 11 issues, stating that past filed tariff transmittals (Nos. 790, 807, 852, 921, 937, 941, 942, 993, 1088, 1184, and 1260) have raised questions regarding the adequacy of Alascom's cost support, the extent to which proposed Tariff 11 rates, terms, and conditions comply with the Communications Act and relevant Commission orders, and, overall, "their lawfulness."⁴

In this case, Alascom has admitted in the Declaration attached to its Petition for Waiver, filed January 7, 2003, that the data on which its CAP relies is unreliable. Among other things, Alascom admits that (1) none of the usage data required by the CAP model was collected for October 2001 – July 2002 and cannot be retrieved; (2) hard-coded allocations embedded in the CAP code are based on historical data that are out-of-date; (3) a significant decline in expenses that can be directly assigned or attributed has caused the CAP process to diverge from its original concept; and (4) generally, the CAP may continue not to function as anticipated.⁵ Therefore, Alascom has acknowledged that it did not have sufficient data to support the filing or to perform CAP calculations correctly and that fundamental problems underlie its cost allocations. These admitted flaws make the rates that Alascom developed based on the CAP unreliable. For these reasons, the Commission should suspend the filing and set it for investigation.

However, if the Commission can determine that market forces are sufficient to constrain Alascom's rates in specific areas covered by this tariff revision, the Commission need not include these areas in the scope of its investigation of Transmittal No. 1281.

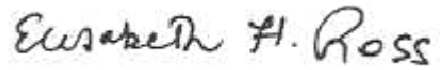
⁴ *Public Notice*; see also *Alascom, Inc., Tariff FCC No. 11, Transmittal No. 790*, CC Docket No. 95-182, Order, 11 FCC Rcd 3703 (Com. Car. Bur. 1995); *Transmittal No. 807*, CC Docket No. 95-182, Order, 11 FCC Rcd 10833 (Com. Car. Bur. 1996); *Transmittal No. 852*, Order, 12 FCC Rcd 3646 (Com. Car. Bur. 1997); *Transmittal No. 921*, Order, 13 FCC Rcd 187 (Com. Car. Bur. 1997); *Transmittal Nos. 921, 937, 941 and 942*, Order, 13 FCC Rcd 4659 (Com. Car. Bur. 1998); *Transmittal No. 993*, Order, 13 FCC Rcd 25055 (Com. Car. Bur. 1998); *Transmittal No. 1088*, Order, 15 FCC Rcd 6 (Com. Car. Bur. 1999); *Transmittal No. 1184*, Order, 16 FCC Rcd 19 (Com. Car. Bur. 2000); *Transmittal No. 1260*, Order, 17 FCC Rcd 24 (Com. Car. Bur. 2001).

⁵ See *Alascom's Petition for Waiver of Annual Tariff FCC No. 11 and Request for Confidential Treatment of Information Submitted in Support of Petition, Attachment A, "Declaration of John C. Klick and Julie A. Murphy,"* WC Docket No. 03-18 (filed January 7, 2003), pp. 3-10.

Dated: December 10, 2003.

Respectfully submitted,

ACS LONG DISTANCE

A handwritten signature in dark ink, appearing to read "Elisabeth H. Ross". The signature is written in a cursive, slightly stylized font.

Elisabeth H. Ross
Birch Horton Bittner & Cherot
1155 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20036
202-659-5800

Attorney for ACS-Long Distance

CERTIFICATE OF SERVICE

I, Elisabeth H. Ross, do hereby certify that a copy of the foregoing Statement of Current Position of ACS-LD and Petition to Suspend and Investigate Transmittal No. 1281 was served via electronic mail upon the following parties:

Charles R. Naftalin, Esq.
Holland & Knight LLP
cnaftalin@hklaw.com

Joe D. Edge, Esq.
Drinker Biddle & Reath, LLP
edgejd@dbi.com

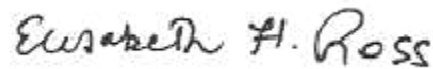
Donn Wonnell
dtwonnell@aol.com

Tina Pidgeon
General Communication, Inc.
tpidgeon@gci.com

Chief
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
c/o Julie Saulnier
julie.saulnier@fcc.gov

Qualex International
qualexint@aol.com

A copy of the foregoing Statement of Current Position of ACS-LD and Petition to Suspend and Investigate Transmittal No. 1281 was served via first-class, postage prepaid, upon Leslie O. Buford, Administrator – Rates and Tariffs, AT&T Communications, 222 W. Adams Street, Suite 15ER10, Chicago, IL 60606.



Elisabeth H. Ross